98-459

No.

FILED

AUG 26 1998

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1997

WARREN W. WYNEKEN, PRO SE,
Petitioner,

v.

HARRY W. SCOTT, JOSEPH M. JOHNSON
and CHARLES E. WELLS,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF INDIANA

REPLY BRIEF OF WARREN W. WYNEKEN TO BRIEF OF CHARLES E. WELLS

WARREN W. WYNEKEN
Pro Se
110 W. BERRY STREET
SUITE 1717
FORT WAYNE, INDIANA 46802-2311
(219) 423-3343

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PARTIES TO THE PROCEEDINGS IN THE COURT WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

Warren W. Wyneken, Atty.
110 West Berry Street, Suite 1717
Fort Wayne, Indiana 46802
Pro Se Attorney for Petitioner

Joseph M. Johnson, Atty.
DeVoss, Johnson, Baker & Ainsworth
147 South Second Street
P. O. Box 30
Decatur, Indiana 46733
Pro Se Attorney for Respondent

Richard R. Bleeke, Atty.
Courtside Building
803 South Calhoun Street, Suite 300
Fort Wayne, Indiana 46802
Attorney for Respondent, Charles E. Wells

M. Bruce Scott, Atty.
146 South Second Street
P. O. Box 247
Decatur, Indiana 46733
Attorney for Scott and Johnson, Respondents

Harry W. Scott, Atty.
111 North Third Street
P. O. Box 466
Decatur, Indiana 46733
Pro Se Attorney for Respondent

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Appendix 7
Letter from Richard R. Bleeke to
Warren W. Wyneken, dated August 6, 1998 . . . 1a

TABLE OF AUTHORITIES

Manhattan Life Ins. Co. v. Cohen,
58 L. Ed. 1253 at p.1253

Aetna Life Ins. Co. v. Lavoie,
89 L. Ed.2d 823 at p.831

St. Louis, I.M.& S.R. Co. v. Starbird,
61 L. Ed.917 at pp.922 and 923

Cissna v. Tennessee,
62 L.Ed. 720 at p.725

It is the belief of Appellant that the above cited cases confirm the right of the Appellant to seek relief of the United States Supreme Court by way of a Petition for Writ of Certiorari to the Supreme Court of Indiana.

REPLY ARGUMENTS

On the Issue of Parties to These Proceedings

Appellee counsel has continued to show as Appellees three parties represented by two counsel. Charles Wells was represented by Richard R. Bleeke, Atty. Harry W. Scott, Atty. and Joseph M. Johnson, Atty. fully participated in the trial of this cause. M. Bruce Scott, also an attorney, is the son of Harry W. Scott and joined them in the trial. None have withdrawn their appearance. This case was tried in the rural town of Decatur, Indiana, in Adams County where all counsel other than Mr. Bleeke reside. Wyneken is from the City of Fort Wayne in Allen County.

On the Contention That No Offer of Proof Was Made

When the trial judge made his ruling, "I am not going to let you try that prior case." Wyneken, who had commenced the litigation, was deprived of his rights to present his case. Bleeke has consistently argued that the issue here was a matter of evidence, which to an adverse ruling required an offer of proof. He has declined to use the word "issues" which was consistent with Wyneken's position and immediate response to the trial judge's ruling (Record, Vol. 1, pp. 135-137.) It was Wyneken's belief that an estimated 135 questions would be necessary to present his facts to the jury - an absurd requirement to satisfying the need of offers of proof. Bleeke contended (in the first paragraph on page 9 of his brief) that no offer of proof was made because "it would have been burdensome to do so." This is a false statement. Appellant made no such contention.

On Bleeke Denial of Wyneken Charge

At page 9, footnote 3, Bleeke contended that an assertion made by Wyneken was a "clear misstatement of fact." This matter had first appeared in the Bleeke brief filed with the Court of Appeals (at page 7, about one-third down) which Wyneken challenged in his Reply Brief to the Indiana Court of Appeals (page 3, about three-fourths down.) Upon receipt of the Bleeke brief to the United States Supreme Court, Wyneken wrote to Bleeke proposing lie detector tests for himself and Bleeke. Bleeke declined. (See Appendix)

Wherefore, Petitioner asks that his Petition for Writ of Certiorari be granted.

Respectfully submitted,

/s/_____

Warren W. Wyneken, Pro Se
110 West Berry Street, Suite 1717
Fort Wayne, Indiana 46802-2311
(219) 423-3343
Attorney No. 1395-02

APPENDIX

APPENDIX 7

BLEEKE & ASSOCIATES
Attorneys At Law

Richard R. Bleeke, Esq.
Courtside Bldg., Suite 300
803 South Calhoun Street
Fort Wayne, IN 46802
Telephone (219) 423-9602
(800) 215-6240
Facsimile (219) 424-0133

August 6, 1998

Mr. Warren W. Wyneken
O'DOWD WYNEKEN & CONNOLLY
110 W. Berry St., Suite 1717
Fort Wayne, IN 46802

RE: Wells, et al. adv. Wyneken
Our File: 103.01

Dear Warren:

I have your August 5, 1998, letter. There is no need for any lie detector test. My statement that we raised the issue with the Court by way of Motion in Limine is confirmed by the record. Motion in Limine was indeed filed and you have referenced it several times during the Appellate process.

Very truly yours,

/s/_____
Richard R. Bleeke

cc: Mr. Charles Wells
Mr. M. Bruce Scott